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SENATE . . . . . No. 1779

The Commonwealth of Massachusetts

PRESENTED BY:

Robert A. O'Leary

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to medical liability.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Robert A. O'Leary	Cape and Islands
Susan C. Tucker	Second Essex and Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00990 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO MEDICAL LIABILITY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The general court finds that:

(1) the current medical litigation process is inconsistent, inefficient and unfair; creating an adversarial environment that discourages the open communication required to improve patient safety;

(2) comprehensive reform is needed to redress the many failings of the current medical liability system in promoting quality care, resolving medical injury cases, and compensating injured patients;

(3) it is the public policy of the commonwealth that improving health care quality and enhancing patient safety are goals that are in the interests of both patients and health care providers;

(4) the impact of medical litigation on health care quality initiatives creates a compelling need for law, rules, and procedures to improve the process by which medical injury cases are resolved; and

(5) administrative compensation programs represent an alternative for reform that can result in predictable justice for patients and physicians alike, as well as a rapid resolution of claims and assessment of damages;

SECTION 2. The general laws, as appearing in the 2006 official edition, are hereby amended by inserting after chapter 211F the following new chapter:-

Chapter 211G

Patient Quality and Compensation Commission

Section 1. Definitions.

The following words and phrases when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Patient Quality and Compensation Commission." The commission established under this act that is responsible for the demonstration program.

"Affiliated physicians." The physicians that have privileges with participating providers.

"Health care services." Any services provided by a health care provider or by any individual working under the supervision of a health care provider that relate to:

(1) The diagnosis, prevention or treatment of any human disease or impairment.

(2) The assessment of the health of human beings.

"Hospital." Any health care facility providing clinically related health services, including, but not limited to, a general or special hospital, including psychiatric hospitals, rehabilitation hospitals, ambulatory surgical facilities, long- term care nursing facilities, cancer treatment centers using radiation therapy on an ambulatory basis and inpatient drug and alcohol treatment facilities, both profit and nonprofit and including those operated by an agency or State or local government. The term shall also include a hospice. The term shall not include an office used primarily for the private or group practice by health care practitioners where no reviewable clinically related health service is offered, a facility providing treatment solely on the basis of prayer or spiritual means in accordance with the tenets of any church or religious denomination or a facility conducted by a religious organization for the purpose of providing health care services exclusively to clergy or other persons in a religious profession who are members of the religious denominations conducting the facility.

"Participating providers." The hospitals and their affiliated physicians who participate in the demonstration program.

"Physician." An individual licensed under the laws of this Commonwealth to engage in the practice of medicine and surgery in all of its branches.

"Program." The demonstration program established under this act.

Section 2. Patient Quality and Compensation Commission.

(a) Membership.--The commission shall consist of the following members:

(1) The Chief Justice of Administration and Management or a designee.

(2) The Attorney General or a designee, who shall serve as the chairperson of the commission.

(3) The Commissioner of the Department of Public Health or a designee.

(4) Two individuals with academic and research expertise in medical liability systems, appointed by the Governor.

(5) Four individuals, one each appointed by the:

(i) Senate President.

(ii) Minority Leader of the Senate.

(iii) Speaker of the House of Representatives.

(iv) Minority Leader of the House of Representatives.

SECTION 3. (a) The commission is authorized to award demonstration grants to hospitals and their affiliated physicians for the development, implementation and evaluation of alternatives to current tort litigation for resolving disputes over injuries allegedly caused by hospitals or physicians. The commission shall seek Federal and private funds to carry out the purposes of this act.

(b) The commission may award up to three grants, and each grant awarded may not exceed a period of five years.

(c) Conditions for demonstration grants.--Any hospital or hospitals and their affiliated physicians may participate in the program by meeting the following criteria:

(1) The hospital's primary coverage is self-insured.

(2) The hospital and its medical staff agree to disclosure of incidents and serious events, in accordance with current law.

(3) The hospital and its medical staff agree to a uniform and comprehensive risk management plan.

(4) The hospital and its medical staff agree to a joint defense agreement.

(5) The hospital and physicians' insurance carriers, including risk retention groups and similar organizations, agree to participate in the program.

SECTION 4. (a) All patients who suffer temporary or permanent injury as a result of negligence by a participating hospital or physician shall be compensated for economic and non-economic damages, through the process described below in Section 4(e).

(b) Participating hospitals and physicians and patients shall agree to a uniform schedule of compensation for injuries based on type of injury, severity of the injury, age, life expectancy, past and future medical costs not covered under other programs and lost past and future wages.

(c) Eligible claims shall be paid in a uniform manner using a fixed benefits schedule set by participating providers in conjunction with the Commission, and shall include compensation for both economic and non-economic losses.

(d) Participating health care providers shall offer early mediation following disclosure of an error to a patient who has been injured.

(e) Each eligible claim shall be submitted to an independent panel. Each panel is composed of three individuals selected at random from an approved list by the independent administrator identified in Section 4(f) of this Act. If any of the selected panel members has a relationship with the patient or a health care provider involved in the particular case, he or she shall be disqualified, and another panel member shall be selected at random. The commission shall determine qualifications of eligible panelists; however, no person shall be qualified to serve as a panelist unless he or she has completed an approved training curriculum in medico-legal issues. Each panel will consult one or more qualified medical experts from the approved list to determine if the patient is eligible for compensation. The independent medical experts shall meet the qualification requirements as determined by the Patient Quality and Compensation Commission. If there is disagreement among the medical experts, the panel shall make a final ruling consistent with generally accepted medical standards and practices. All decisions of the independent panel shall be in written form.

(f) Administration.--The participating health care providers shall appoint an independent administrator. The independent administrator is responsible for the following:

(1) Recruitment and maintenance of the qualified medical experts.

(2) Recruitment and maintenance of the qualified independent panelists.

(3) Collection of documents needed to determine if a claim is compensable.

(4) Selection of the independent panel.

(5) Determination of compensation based on the opinion of the independent panel and the adopted uniform schedule of compensation.

(6) Ensuring proper payments are made to the claimant.

(7) Approval of any agreement for binding arbitration between the patient and the participating health care providers.

(8) Developing analysis and feedback to the participating providers for improving care processes and reducing the incidence of medical errors.

(9) Administration of the arbitration program.

(g) Patients shall opt in to the program prior to or at the point of care. At a minimum, the opt-in process shall become an integral part of participating physician and hospitals' existing informed consent policies and procedures. A patient opts in to the program by accepting a written agreement. If the patient agrees to the agreement, he or she agrees to accept the determination of the independent panel. The decision of the independent panel is final, legally binding and enforceable in court.

(h) All participating physicians and hospitals must agree to participate for a minimum of three years. The demonstration period should be at least five years.

(i) The participants and the Commonwealth will share the costs of operating the administrative system during the demonstration period, with participants bearing one-quarter of the cost and the Commonwealth bearing three-quarters of the cost. If the program continues beyond the demonstration period, all costs are the responsibility of the participating health care providers. Compensation to patients is the responsibility of the participating physicians and hospitals' health care providers.

(j) Fees to any attorneys retained by the patient shall be limited to 20% of the total award.

SECTION 5. Requirements

(a) Each entity desiring a grant may establish a scope of jurisdiction, such as a designated geographic region, a designated area of health care practice or a designated group of health care providers or health care organizations, for the proposed alternative to current tort litigation that is sufficient to evaluate the effects of the alternative.

(b) An entity proposing a scope of jurisdiction shall demonstrate how patients would be notified that they are receiving health care services that fall within such scope.

SECTION 6. Application

(a) Each entity desiring a grant under section 4 shall submit to the commission an application, at such time, in such manner and containing such information as the commission may require.

(b) Review panel.--

(1) In reviewing applications under subsection (a), the commission shall consult with a review panel composed of relevant experts appointed by the commission.

(2) The panel shall be composed as follows:

(i) The commission shall solicit nominations from the public for individuals to serve on the review panel.

(ii) The commission shall appoint at least 11 but not more than 15 highly qualified and knowledgeable individuals to serve on the review panel and shall ensure that the following entities receive fair representation on the panel:

(A) Patient advocates.

(B) Health care providers and health care organizations.

(C) Attorneys with expertise in representing patients and health care providers.

(D) Insurers.

(E) State officials.

(c) Chairperson.--A person designated by the commission shall be the chairperson of the review panel.

(d) Availability of information.--The commission shall make available to the review panel such information, personnel and administrative services and assistance as the review panel may reasonably require to carry out its duties.

(e) Information from agencies.--The review panel may request directly from any department or agency of the Commonwealth any information that such panel considers necessary to carry out its duties. To the extent consistent with applicable laws and regulations, the head of such department or agency shall furnish the requested information to the review panel.

(f) Report.--Each entity receiving a grant under subsection 3(a) shall submit to the commission a report evaluating the effectiveness of activities funded with grants awarded under subsection (a) at such time and in such manner as the commission may require.

(g) Technical assistance.--The Department of Public Health shall provide technical assistance to the entities awarded grants under this act. Technical assistance shall include:

(1) The development of a defined payment schedule for non-economic damages, including guidance on the consideration of individual facts and circumstances in determining appropriate payment, the development of classes of payment events and guidance on early disclosure to patients of potentially compensable events.

(2) The development of common definitions, formats and data collection infrastructure for participating providers receiving grants under this section to use in reporting to facilitate aggregation and analysis of data Statewide.

SECTION 7. Evaluation

(a) The commission, in consultation with the review panel established under this act, shall enter into a contract with an appropriate research organization to conduct an overall evaluation of the effectiveness of grants awarded under this act and to annually prepare and submit a report to the chairs of the Joint Committee on Health Care Financing, the Joint Committee on Ways and Means and the Joint Committee on the Judiciary. Such an evaluation shall begin not later than 18 months following the date of implementation of the first program approved under this act.

(b) Contents.--The evaluation under subsection (a) shall include:

(1) An analysis of the effect of the alternative system on the number, nature and costs of health care liability claims.

(2) A comparison of the claim and cost information of each entity receiving a grant.

(3) A comparison between entities receiving a grant under this section and entities that did not receive such a grant, matched to ensure similar legal and health care environments and to determine the effects of the grants and subsequent reforms on:

(i) The liability environment.

(ii) Health care quality.

(iii) Patient safety.

(iv) Patient and health care provider satisfaction with the reforms.

SECTION 8. Confidentiality

Disclosure of documents used in the program shall be protected. All participating health care providers shall be provided maximum protections to conduct peer review.